

1 BAKER BOTTS L.L.P.
Jon V. Swenson (SBN 233054)
2 1001 Page Mill Road
Building One, Suite 200
3 Palo Alto, CA 94304-1007
Telephone: (650) 739-7500
4 Facsimile: (650) 739-7699
Email: jon.swenson@bakerbotts.com

5 BAKER BOTTS L.L.P.
6 John M. Taladay (*pro hac vice*)
Joseph Ostoyich (*pro hac vice*)
7 Erik T. Koons (*pro hac vice*)
Charles M. Malaise (*pro hac vice*)
8 1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2400
9 Telephone: (202) 639-7700
Facsimile: (202) 639-7890
10 Email: john.taladay@bakerbotts.com
Email: joseph.ostoyich@bakerbotts.com
11 Email: erik.koons@bakerbotts.com
Email: charles.malaise@bakerbotts.com

12 *Attorneys for Defendant Koninklijke Philips N.V., and*
13 *Philips Electronics North America Corporation*

14
15 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
16 **SAN FRANCISCO DIVISION**

17 In re: CATHODE RAY TUBE (CRT)
18 ANTITRUST LITIGATION

Case No. 07-5944 SC
MDL No. 1917

19 This Document Relates to:

20
21 INDIRECT-PURCHASER ACTIONS

**DECLARATION OF CHARLES M.
MALAISE IN SUPPORT OF INDIRECT
PURCHASER PLAINTIFFS'
ADMINISTRATIVE MOTION TO SEAL
DOCUMENTS PURSUANT TO CIVIL
LOCAL RULES 7-11 AND 79-5(d)**

1 I, Charles M. Malaise, hereby declare as follows:

2 1. I am an associate with the law firm of Baker Botts L.L.P., counsel for Defendants
3 Koninklijke Philips N.V. and Philips Electronics North America Corporation (collectively, the
4 “Philips Defendants”). I make this declaration in support of Indirect Purchaser Plaintiffs’
5 Administrative Motion to Seal Documents Pursuant to Civil Local Rules 7-11 and 79-5(d) (Dkt. No.
6 1857) (“Motion to Seal”).

7 2. I have personal knowledge of the facts set forth herein and, if called upon, could and
8 would competently testify thereto under oath.

9 3. On June 18, 2008, the Court issued a Stipulated Protective Order (Dkt. No. 306) (the
10 “Stipulated Protective Order”).

11 4. The Philips Defendants have produced in this action certain documents and
12 information designated as either “Confidential” or “Highly Confidential” pursuant to the Stipulated
13 Protective Order.

14 5. On August 21, 2013, the Indirect Purchaser Plaintiffs filed the Motion to Seal in
15 which they asked this Court to seal the following documents, or portions thereof, pursuant to Civil
16 Local Rules 7-11 and 79-5(d):

17 a. Portions of the Indirect Purchaser Plaintiffs’ Response to Defendants’ Joint
18 Objections to the Report and Recommendation Regarding Class Certification
19 (“Class Certification Response”) that contain information from documents
20 that the Philips Defendants have designated either as “Highly Confidential” or
21 “Confidential;” and

22 b. Portions of the Indirect Purchaser Plaintiffs’ Response to Defendants’ Joint
23 Objections to the Report and Recommendation Regarding the Motion to
24 Strike.

25 6. Pursuant to Civil Local Rule 79-5(d), I make this declaration on behalf of the Philips
26 Defendants to provide the basis for the Court to maintain under seal certain documents and
27 information designated by the Philips Defendants as “Confidential” and “Highly Confidential” and
28

1 all references to those documents and information in the Class Certification Response.

2 7. Pursuant to Civil Local Rules 7-11 and 79-5(d), this Court's General Order No. 92,
3 Electronic Filing of Documents Under Seal, effective May 10, 2010, and the Stipulated Protective
4 Order, the following portions of documents should be maintained under seal and redacted from the
5 Class Certification Response:

- 6 a. Class Certification Response, page 4, lines 20 through 21 (discussing and
7 citing Exhibit 35 to the Declaration of Mario N. Alioto in Support of Motion
8 of Indirect-Purchaser Plaintiffs for Class Certification ("Alioto Declaration"),
9 is the Philips Defendants' Responses and Objections to Direct Purchaser
10 Plaintiffs' First Set of Interrogatories Nos. Four and Five, dated March 21,
11 2012, that the Philips Defendants designated "Confidential" pursuant to the
12 Stipulated Protective Order).
- 13 b. Class Certification Response, page 5, lines 3 through 4 (discussing and citing
14 Exhibit 25 to the Alioto Declaration, a document produced by the Philips
15 Defendants in this litigation with bates numbers PHLP-CRT-006657 that the
16 Philips Defendants designated "Highly Confidential" pursuant to the
17 Stipulated Protective Order).
- 18 c. Class Certification Response, page 9, lines 1 through 6 (discussing and citing
19 Exhibit 115 to the Alioto Declaration, a document produced by the Philips
20 Defendants in this litigation with bates numbers EIN0045706 through
21 EIN0045738 that the Philips Defendants have designated "Highly
22 Confidential" pursuant to the Stipulated Protective Order).

23 8. The information in question from the Class Certification Response relies on
24 documents designated by the Philips Defendants as either "Confidential" or "Highly Confidential"
25 pursuant to the Stipulated Protective Order because the documents contain confidential, nonpublic,
26 and highly sensitive business information about the Philips Defendants' sales practices, business and
27 supply agreements, and competitive positions. The documents describe relationships with

1 companies (including customers and vendors) that remain important to the Philips Defendants'
2 competitive positions. Publicly disclosing this sensitive information presents a risk of undermining
3 the Philips Defendants' relationships, would cause harm with respect to the Philips Defendants'
4 competitors and customers, and would put the Philips Defendants at a competitive disadvantage.

5 I declare under penalty of perjury under the laws of the United States of America that the
6 foregoing is true and correct.

7 Executed on August 28, 2013 in Washington, D.C.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A handwritten signature in black ink, appearing to read 'Charles M. Malaise', is written over a horizontal line.

Charles M. Malaise